

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

NETTIE REAY,

Petitioner,

No. CIV S-05-0356 GEB DAD P

vs.

GLORIA HENRY, Warden,

Respondent.

ORDER

Petitioner is a state prisoner proceeding pro se with this application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. One of petitioner's claims is that her statements to police should have been excluded at her trial because they were coerced and were obtained in violation of Miranda v. Arizona, 384 U.S. 436 (1966). According to respondent, the California Court of Appeal for the Third Appellate District augmented the record on appeal sua sponte with the videotape of petitioner's confession, noting that petitioner's Miranda claim could not be evaluated without reviewing the videotape. Neither party has lodged the videotape with this court. Respondent informs the court that she "has never had access to it." (Answer at 21 n.5.)<sup>1</sup>

<sup>1</sup> The court observes that both respondent and petitioner appear to have had access to the videotape since at least March 31, 2000, when it apparently was received by the California Court of Appeal from the county clerk and docketed in the court's public record as Defendant's Exhibit A.

1 The court finds that the videotape of petitioner's statements to police is necessary to a  
2 determination of this action. Accordingly, pursuant to Rule 7 of the Rules Governing Section  
3 2254 Cases in the United States District Courts, respondent will be directed to obtain the  
4 videotape of petitioner's statements to police from the California Court of Appeal or the trial  
5 court and lodge it with this court, along with any written transcription of the videotape that may  
6 exist, within fourteen days of the date of this order.

7 Good cause appearing, IT IS HEREBY ORDERED that, within fourteen days  
8 from the date of this order, respondent shall lodge the videotape of petitioner's statements to  
9 police and any written transcription thereof.

10 DATED: January 12, 2009.

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13 DALE A. DROZD  
14 UNITED STATES MAGISTRATE JUDGE

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